

**STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
PROJECT STAFF REPORT  
August 30, 2006**

**Proposal:** “Goguen Land Exchange” project

**Proponents:** Michael L. Goguen  
Flathead Gateway Partners

**PART I – REQUEST SUMMARY**

**Project Description:** The proponent proposes to exchange 560 acres (acquisition parcel) of privately owned timber lands in the Whitefish Area, for 440 acres (disposal parcel) of Trust Lands in the Beaver/Skyles sub area of the Whitefish Neighborhood Plan (WNP). The 560-acre acquisition parcel has a conservation easement in place limiting development of the property to three home sites. The proponent proposes to voluntarily place a conservation easement on the disposal parcel limiting development to two home sites, as is the community preference in the WNP. The proposal also includes full funding for the design and construction of a loop trail system in the acquisition parcel, and for an easement, design and construction of a trail segment for the “Trail Runs Through It” in the disposal parcel.

**Project Location:**

Acquisition parcel: Portions of Sections 2, 11 and 12 in T31N, R23W  
Disposal parcel: Trust Lands in Sections 28 and 29 of T31N, R22W

Both the acquisition and disposal parcel are located within the jurisdictions of the Stillwater Unit office of MT DNRC’s Northwest Land Office.

**Trust Beneficiaries:** Public Building

**Background Information:**

**Whitefish Area Trust Land Planning Activities**

There are 13,000 acres of State Trust Lands near Whitefish that are managed by the MT Department of Natural Resources and Conservation (DNRC). The DNRC came to Whitefish in May of 2003 to prepare a Neighborhood Plan for these Trust Lands. Local citizens petitioned the State Board of Land Commissioners (Land Board) to charter a committee comprised of Whitefish citizens working in collaboration with the DNRC to develop the Neighborhood Plan in order to represent the needs and values of the community. The Whitefish School Trust Lands Advisory committee was established and completed their work in October 2004. Included in the implementation phase of the plan is the establishment of a recreation trail interconnecting the State Trust Lands parcel and looping around Whitefish Lake and the city itself. Conceptual trail locations have included a main trail segment in the disposal parcel. The WNP also states that the community preference for the disposal parcel is to pursue conservation buyer opportunities that would limit development to a maximum of two homes.

**PART II - RECOMMENDATION**

**Transaction Options**

The options generally available for Trust Land transactions are separated into two categories:

1. Disposal: Sale/Land Bank; Land Exchange; Permanent Easement
2. Authorization: Lease; License

DNRC proposes that transactions would occur in the following order:

Step 1. Deed restriction—the State would be compensated for the value of the development potential on the 440 acre State parcel by the City of Whitefish in a manner that limits the parcel to two home sites, as outlined in the Whitefish Trust Lands Neighborhood Plan, and reserves the rights for a recreational access trail corridor using a deed restriction.

Step 2. Land exchange—Goguen and the State would complete the proposed land exchange transaction where the State would acquire the privately-owned 560 acre parcel in exchange for the State's deed-restricted 440 acre parcel.

Lease or license—Other deed restrictions or short term transactions (e.g. lease or license) necessary to complete the long-term project objectives could be completed prior to a land exchange.

These transactions would need to involve the City of Whitefish.

Revenue derived from traditional uses would continue on all State owned parcels.

### **Coordination Opportunities And Needs**

Public scoping will include focused effort to identify opportunities to coordinate activities that are complimentary or conflicting. Some of the known activities that will be considered in relation to this proposal are:

- Forest Management activities (access and internal road system, existing stand value, site productivity).
- “Trail Runs Through It” proposal
- Any effort toward new legislation should be coordinated with the community foundation being considered with intention to implement conservation strategies on Trust Lands.
- Implementation of other WNP community preference “conservation opportunities”
- Possible relationship of trail system to a Fire Mitigation Strategy per Policy 3 of the WNP
- Other goals, policies etc...

### **Recommendation**

The proposal addresses the intent of the WNP. This proposal has potentially significant long-range impacts on the future use and management of affected State Trust Lands as well as the community at large. **Staff recommends continuing with the Process Determination Phase of the WNP project review process.** The following actions would be advantageous to DNRC:

*Facilitate a Public meeting to provide information, hear comments and consider coordination opportunities and needs. Publish a Scoping Notice and make available the Letter of Interest and Staff Report for local governments, the public, transaction partners, and key local legislators. Input received from this Scoping process will be used by DNRC to determine:*

- *Specific Transaction options and sequencing.*
- *A public involvement plan.*
- *Options for working with a Community Transaction Partner(s).*
- *Options for working with a local government entity.*
- *If an RFP should be issued to consider other proposal options that may also exist for the parcel being evaluated.*
- *The appropriate applications needed to complete the transactions and initial level of MEPA.*

The resulting course of action should be presented to the Board of Land Commissioners as a staff recommendation prior to entering into an implementation agreement with the proponent.

The letter of interest states “a commitment to the Whitefish community to assist them in achieving their goals for land protection and recreation in the Whitefish area.” While no one knows exactly what the solutions will look like, all agree that there are opportunities to achieve the goals of the Whitefish Plan. As stated in Mr. Goguen’s cover letter:

*“The Neighborhood Plan has created a wonderful opportunity for win-win solutions for the community, the State Trust Land beneficiaries, the DNRC as land managers, and for individual property owners.”*

The opportunities and issues that we will be addressing through the review of this request have not been traditionally encountered in managing MT Trust Lands. DNRC staff fully expect that our toolbox will have a few non-traditional tools in it upon implementation.

## **PART III – AGENCY REVIEW**

*The Real Estate Management Plan (REMP), the State Forest Land Management Plan (SFLMP), and the Whitefish Neighborhood Plan (WNP) make up the primary framework within which management decisions are made regarding these lands. Discussion regarding each of these plans’ applicability to the proposal is offered below:*

### **Real Estate Management Plan**

The REMP is the guiding management philosophy of the DNRC Real Estate Management Bureau and embodies three general goals: (1) sharing in expected community growth; (2) planning proactively; and (3) increasing revenue for Trust beneficiaries. It is recognized that public input and local community involvement will be critical for the success of the REMP. The proposal is considered here in context with the REMP “Funnel Filter” process:

**Relationship To The First 5 Filters Of The Funnel Process From The REMP:** The following filters are intended to be applied in consideration of development projects. Though this project is considered conservation per the REMP, a brief filter description and some discussion is offered at each filter level.

#### ➤ **PHYSICAL ENVIRONMENT FILTER**

*The Physical Environment filter identifies lands unsuitable for development due to steep slopes, floodplain, or presence of valuable habitat for Grizzly Bears and/or Bull Trout. Because the proposal is a conservation project as opposed to a development project, it passes through this filter layer (that is not to say that consideration would not be given to these issues when planning and reviewing improvements associated with the trail).*

#### ➤ **TRANSITIONAL FILTER**

*The Transitional Filter identifies lands with favorable development attributes through proximity relationships of Trust Lands with established uses and existing roads and infrastructure. Because the proposal is a conservation project as opposed to a development project, it passes through this filter layer.*

*It is worthy to note that the REMP Record of Decision targets, and gives preference to conservation opportunities that provide revenue to the Trusts on lands with proximity relationships with established conservation uses, or lands designated within neighborhood plans as conservation or open space.*

#### ➤ **MARKET/DEMOGRAPHIC FILTER**

*The Market/Demographic Filter attempts to define the Trust Land’s “share” of development within a given market by pacing it with projected growth in that market given the Trust Land share of land. The REMP supports conservation strategies on all trust lands. Because the proposal is a conservation project as opposed to a development project, it passes through this filter layer.*

#### ➤ **PHYSICAL-SUITABILITY FILTER**

*The Physical Suitability Filter guides site evaluations for the purpose of identifying specific parcels of land that might be suitable for development opportunities. The WNP identifies development opportunities within the plan area but states conservation is the community preference within a vast majority of the plan area. Because the proposal is a conservation project as opposed to a development project, it passes through this filter layer.*

➤ **REGULATORY FILTER**

*Applicable documents include:*

- *State Forest Land Management Plan*
- *Whitefish Neighborhood Plan (local growth policies)*
- *Habitat Conservation Plan*
- *Local land use regulations*

*Given the nature of the proposed use, there are no known conflicts with the existing, applicable regulatory (and non-regulatory) land use documents. The proposal is the first major step toward implementation of the WNP. Special consideration would have to be given to the State Forest Land Management Plan to minimize and/or compensate for impacts to forest management. Consideration to all of the above would be given during development of the management agreement being proposed.*

**State Forest Land Management Plan**

Because the lands on which the proposal is being considered are timber lands, the impacts to the management of these lands for timber production will be considered, i.e.:

- Shifting of management objectives to reflect formalized recreational use;
- Value and condition of timber stand on both the disposal and acquisition parcels;
- Legal access and existing road system to access the timber;
- Increased public awareness/ acceptance of forest management practices and activities;
- Net change of acreage available for timber production;
- Any other impacts identified during scoping and review.

The WNP recognizes the SFLMP current timber and classification and addresses them within the context of a more detailed community discussion. Forest management supervisors will be involved at all stages of discussion, and review of this proposal to insure consistency with the goals of the SFLMP.

**Whitefish Neighborhood Plan**

The WNP is consistent with, and reflective of the REMP goals and addresses them within the context of a more detailed community discussion. The proposal is the implementation of a major component of the WNP. The proponent has a thorough understanding of the community values as expressed in the WNP and has worked hard to offer a proposal that gives strong consideration to addressing those values. Following is a listing of the most relevant goals and policies from the WNP with staff comments in italics:

Overall Goals:

- Generate long-term and full-market economic return from the use of trust lands for Montana's public schools and other beneficiaries.
- Clarify the goals and legal responsibilities necessary between Whitefish, the County, DNRC, and their partners to complete a set of transactions to protect important conservation lands and meet trust land fiduciary objectives.
- Enhance recreational use of trust lands for multiple users in a manner that provides compensation and supports the local economy and provides responsible stewardship of the natural resources.

➤ **Policy 2 – Create a Multipurpose, Regional Recreational System That Links Trust Lands in the Whitefish Area**

#### **Implementation Strategy 2.1 - Create a Regional Loop Trail**

*The proposal also includes full funding for the design and construction of a loop trail system in the acquisition parcel, and for an easement, design and construction of a trail segment for the "Trail Runs Through It" in the disposal parcel.*

#### ➤ **Policy 4 – Land-Use Actions on Trust Lands Should Support Community Values**

*Relative quality and accessibility of the recreation experience on the acquisition parcel are going to be a significant factor in the community determining whether or not the proposal is supportive of community values.*

#### ➤ **Policy 5 – Utilize a Flexible Menu of Techniques Tailored to Conservation Objectives to Protect Land**

##### **Implementation Strategy 5.1 - Emphasize the Use of the Following Conservation Techniques to Implement This Neighborhood Plan**

###### **f. Land Trade**

Through a land exchange, land or interests in land may be exchanged for other land of similar value. The benefit to a private party in a land trade is that the exchange could be accomplished without the tax consequences that accompany the sale of land.

##### **Implementation Strategy 5.2 - Land Trades Involving Trust Lands Should Only Be Made for Other Lands in the Whitefish Area**

Land trades of school trust lands in the Whitefish area should be made in those instances where DNRC could create a more coherent and logical pattern of ownership in the best interests of the trust beneficiaries. The trading of trust lands adjacent to Whitefish should be made for other desirable lands in the greater Whitefish area.

*While land exchanges are identified as a tool that could be used to meet plan objectives, it is arguable whether the proposal creates a "more coherent and logical pattern of ownership in the best interest of the trust beneficiaries." In this instance "more coherent and logical..." will translate into a net increase in timber productivity.*

*Land exchange criteria #1 in the State Board of Land Commissioners Land Exchange Policy states: "Land to be acquired by the state must be at least as valuable as the state land being exchanged."*

*The acquisition parcel is 560 acres of private timber land with a conservation easement allowing three homesites.*

*The disposal parcel is 440 acres of unzoned land within close proximity to Whitefish. The property has legal access from two directions. The WNP targets the area for conservation that would be achieved through a conservation buyer strategy limiting the area to two homesites.*

*The conservation strategy would have to be achieved and the trust compensated before the "equal or greater value" criteria could be met. Achieving the conservation strategy cannot occur under existing law.*

*The Board of Land Commissioners Land Exchange Policy can be viewed on the DNRC website.*

#### ➤ **Policy II – Pursue Legislative Changes Necessary to Implement Components of This Neighborhood Plan**

*Coordination would be necessary to assure that agreeable legislation can be forwarded for consideration during the upcoming legislative session if the Department and the proponent decide to proceed to implementation using a conservation easement as part of the transaction.*

(Prepared by: Northwest Land OfficeSRL)

G:CO4117/Real Estate Mgmt/Whitefish Area Plan/GoguenExchange/GoguenXStaffReport